

### **AMENDMENTS TO THE DRAWINGS**

By entry of this amendment, Figure 1 has been replaced by replacement FIG. 1 submitted herewith. The replacement is intended to create a more readable version of the originally submitted figure. Amendments include the renumbering of elements, as well as the addition of continuity sensor circuit 111 and timing circuit 112. Support for these additions was included in the originally-filed specification, as discussed below. No new matter has been added.

Also by entry of this amendment, new FIG. 2 has been added and is submitted herewith. Support for the process embodied in this new figure is found in the claims as originally filed, and is discussed in greater detail below. No new matter has been added.

### **REMARKS/ARGUMENTS**

In the February 7, 2006 Office Action (the Action), a substitute specification was required under 37 C.F.R. § 1.125(a). Likewise, a substitute abstract was recommended. With regard to the claims, claims 1-6 are now pending in this application. Claims 1-6 were objected to and/or rejected under 35 U.S.C. §§ 102(e) and 103(a). Furthermore, claims 1 and 2 were rejected under a nonstatutory double patenting rejection.

#### **I. Oath / Declaration**

The Action rejected the declaration supplied with the original filing. A new executed declaration noting the application number and filing date is attached.

#### **II. Specification**

The Action objected to the content and format of the specification. Amendments to the specification are set forth above, and a substitute specification has been submitted herewith. No new matter has been added. Support for the rewritten portions of the specification can be found in the specification, claims, and figures of the original filing. With regard to the description accompanying new Figure 2, support for the method can be found in the originally filed claims.

#### **III. Drawings**

Amendments to the figures have been noted above, and a replacement Figure 1 and new Figure 2 have been submitted herewith. No new matter has been added. Support for the addition of continuity sensor circuitry 111 and timing circuitry 112 to replacement Figure 1 is found both in the specification and the claims as originally filed. Support for continuity sensor circuitry 111 is found in original paragraph "Para 3". Timing circuitry 112 is found in original Claim 5. Support for newly added Figure 2 is found in Claims 1 and 2.

#### **IV. Abstract**

The Action objected to the content and format of the specification. The Abstract has been rewritten, as noted above. No new matter has been added. Support for the rewritten Abstract can be found in the original abstract, claims, figures and specification as originally filed.

V. Claims

By entry of this amendment, claim 4 has been cancelled without prejudice or disclaimer. In addition, claims 1-3, 5, and 6 have been amended, and claims 7-11 have been added. No new matter has been added. Rejections and objections are addressed individually below. Applicant respectfully requests in light of the amendments and remarks, that the claims be reconsidered.

a. Claim Objections

The Action rejected claims 1-6 because of a variety of informalities. Informalities included: the use of Roman numerals for claim numbers; the use of multiple sentences in claim 1; and lack of antecedent basis for various claim terms. Each of these informalities has been addressed by the claim amendments mentioned above. Applicant respectfully requests that the objections to claims 1-3, 5, and 6 be withdrawn and the claims allowed.

b. Double Patenting

The Action rejected claims 1 and 2 provisionally on the ground of nonstatutory obviousness-type double patenting over the claims of co-pending Application No. 10/908,059. In response, Applicant respectfully submits the included Terminal Disclaimer to Obviate a Provisional Double Patenting Rejection over a Pending "Reference" Application. Applicant believes that the filing of this disclaimer overcomes the rejection and requests that the double patenting rejections of claims 1 and 2 be withdrawn and the claims allowed.

c. Claim Rejections under 35 U.S.C. § 102

The Action rejected claims 1 and 2 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,960,201 to Cumble (*Cumble*). In rejecting these claims, the Action noted, "As to the recitation 'sensing that the unit is held by an adult hand' in claim 1, the applicant failed to positively recite the use of sensing means/mechanism for sensing the hand of the user." There is no requirement that a means/mechanism be recited for the operation recited in claim 1. Examples of such a sensing recitation are described in original paragraph "Para 5" (new paragraph 0008). Ultimately, *Cumble* does not teach or suggest the sensing of an adult hand. Therefore, Applicant respectfully requests that the rejection of claim 1 be withdrawn and the claim allowed. In addition, claim 2 depends from claim 1 and is therefore allowable for the same reason, and because claim 2 includes recitations not taught or suggested by *Cumble*.

d. Claim Rejections under 35 U.S.C. § 103

The Action rejected claims 3-6 under 35 U.S.C. § 103(a) as being unpatentable over *Cumbe* in view of U.S. Patent No. 5,738,678 to Patel (*Patel*). In rejecting these claims, the Action noted that it would have been “a matter of obvious engineering choice” and “obvious ... to incorporate the UV transmissive cover into the treatment device.” However, this taking of official notice is inappropriate, as the inclusion of the UV transmissive cover would not have been obvious. Applicant respectfully requests that the Office demonstrate the obviousness of this recitation by providing an example in the form of a reference. Absent such a showing, Applicant requests that the rejections be withdrawn and the claims allowed.

With regard to the recitation from amended claim 3, “a safety sensor that prevents the unit from being turned on until an adult hand properly holds the device,” the Action argues that “the use of a safety sensor to control the commencing and/or ceasing of the treatment radiation is well known in the medical art.” The Action cites *Patel* as an example of a safety sensor. However, nowhere does *Patel* cite the use of a safety sensor which senses that an adult hand properly holds the device. *Patel* merely cites the use of a pressure sensor or strain gauge to detect deformation due to contact with a tooth. *Patel* does not sense a properly positioned hand, let alone a properly positioned adult hand. As such, neither *Cumbe* nor *Patel*, either alone or in combination, teaches or suggests every element of claim 3. Applicants therefore respectfully request that the rejections of claim 3 be withdrawn and the claim allowed. Moreover, claims 5 and 6, which depend from claim 3 are allowable for the same reason and because they each include recitations not taught or suggested by the cited references.

Furthermore, with regard to these rejections under § 103, the combination of *Cumbe* and *Patel* is improper because no motivation to combine these references is cited. Rather, the Action notes that combining the two would simply “enhance the safety of the system.” This statement alone cannot serve as justification for the combination. Without drawing a justification from the references themselves, it appears that the Action may be arguing using improper hindsight as a justification. Therefore, Applicant respectfully requests that the rejections of claims 3, 5, and 6 under § 103 be withdrawn.

e. New Claims

Claims 7-11 depend ultimately from either claim 1 or 3, and are therefore allowable for the same reasons as their respective parent claims. Moreover, these claims are allowable because they each include recitations not taught or suggested by either *Cumbie* or *Patel*.

**CONCLUSION**

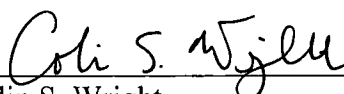
In view of the foregoing amendment and remarks, Applicants respectfully submit that all of the pending claims in the present application are in condition for allowance. Reconsideration and reexamination of the application and allowance of the claims at an early date is solicited. If the Examiner has any questions or comments concerning this matter, the Examiner is invited to contact the applicants' undersigned attorney at the number below.

Respectfully submitted,

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